IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.2056 OF 1990

The Bombay Agricultural Produce
Market Committee, Vardhaman Chambers,
5th Floor, Kalyan Street,
Bombay 400 009. .. Petitioner

v/s.

1. The State of Maharashtra

2. Shri B.D.Pawar,
Director of Marketing,
Maharashtra State, Pune.

3. Messrs. Raj Oil Mills,
Military Road, Moral,
Bombay 400 069.

4. Messrs. Ahmed Oomerbhoy,
Ahmed Oomer Street, Two Tanks,
Bombay 400 008.

5. Messrs. Kamani Oil Industries,
324, Narsi Natha Street,
Bombay 400 009.

6. Messrs. Bombay Oil Industries,
281/284, Narsi Natha Street,
Kanmoor House, Bombay 400 009.

7. Messrs. Malabar Oil Marketing Co.,
Military Road, Marol,
Bombay 400 069.

8. Shri Abhaysinh Raje Bhosale,
former Minister for Co-operation,
Government of Maharashtra,
Mantralaya, Bombay. .. Respondents

Mr.Y.R.Naik i/by Mr.Prashant Naik for the petitioner.

CORAM : R.M. LODHA AND
J.P. DEVADHAR, JJ.

DATED : 17th June, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

Heard Mr.Y.R.Naik, the learned counsel for the

petitioner. None appears for the respondents.

2. The Bombay Agricultural Produce Market Committee (for short, "the Committee") is the petitioner in this writ petition. They are aggrieved by the order dated 8th December, 1989, passed by the Minister for Co-operation, Government of Maharashtra whereby the mills (respondent Nos.3 to 7 herein) were exempted from the payment of the marketing fee and supervision charges.

3. The controversy arises in this writ petition in the facts and circumstances that may be briefly noticed by us. The Director of Agricultural Marketing, Maharashtra State, Pune (for short, 'the Director') vide notification dated 20th June, 1988 declared that the edible oil within the area of operation of Agricultural Produce Market Committee shall stand regulated. By another notification dated 18th October, 1988, the Director declared Dana Bunder and Masjid Bunder as the 'principal market' within the area of operation of the Bombay Agricultural Produce Market Committee for the purposes of marketing of agricultural produce specified in the notification dated 20th June, 1988. The respondent Nos.3 to 7 herein are oil mills. They carry on the business of milling, processing, refining and manufacturing of various edible oils. These respondents have been called upon by the present petitioner- Market Committee to pay the

marketing fee and supervision charges. The said respondents did not respond to the notices issued by the Market Committee but made representations to the Market Committee. The Market Committee rejected the said representations. Aggrieved thereby, the said respondents made an application to the State Government purportedly under the provisions of Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (for short, "Act of 1963"). The respondent No.8 who was the Minister for Co-operation, Maharashtra State, exercised the power under section 59 of the Act of 1963 and exempted the respondents-mills from payment of marketing fee and supervision charges. Aggrieved thereby, the Market Committee has filed this writ petition.

4. At the outset, it may be observed that the impugned order remained stayed during the pendency of the writ petition vide order dated 3rd September, 1990 passed by the Division Bench in Appeal No.921 of 1990 and as a result thereof, the respondent Nos.3 to 7 could not derive any advantage of the exemption. In other words, the notifications dated 20th June, 1988 and 18th October, 1988 have remained operative all these years qua respondent Nos.3 to 7.

5. The respondent Nos.3 to 7 have not chosen to appear to support the impugned order. Neither the Government Pleader not the Assistant Government

Pleader have appeared to justify the impugned order.

6. After having heard Mr.Y.R.Naik, the learned counsel for the petitioner, we are of the view that the impugned order cannot be sustained for more than one reason. Firstly, the impugned order that has been passed by the Minister for Co-operation by exempting the respondent Nos.3 to 7 from the payment of marketing fee and supervision charges, did not emanate from the proceedings under section 59. As a matter of fact, the respondent Nos.3 to 7 herein approached the State Government since their representations made to the Director of Agricultural Marketing, Maharashtra State, Pune for withdrawal of the notifications dated 20th June, 1988 and 18th October, 1988 did not get positive response. In the said proceedings, there was no question of invoking section 59 of the Act of 1963 and exempting respondent Nos.3 to 7 from the payment of the marketing fee and the supervision charges. Secondly, it seems to us that the power of exemption has been exercised by the Minister of Corporation arbitrarily. Section 59 empowers the State Government to exempt any Marketing Committee or any class of persons from the provisions of the Act of 1963 by general or special order. The respondent Nos.3 to 7 by no stretch of imagination, can be said to be class of persons as contemplated in section 59 of the Act of 1963. It is not that the respondent

Nos.3 to 7 were the only oil millers dealing in edible oil within the Market Committee. As per the averments made in the writ petition and that remain uncontroverted that the traders and/or market functionaries dealing in the edible oil are really 500 or thereabouts. That would mean that by the impugned order, the respondent Nos.3 to 7 are singled out and have been granted exemption from the payment of market fee and supervision fee while all others are left out. In other words, within the same class of millers and the market functionaries dealing in the edible oil, the respondent Nos.3 to 7 have been singled out which cannot be justified. The exercise of power for exemption by the Municipal Corporation, thus, is not legally sustainable.

7. We, accordingly, allow the writ petition and set aside the order dated 8.12.1989 with no order as to costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)